

Issue Paper Number 01-005



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- ☐ Board Meeting
- ☐ Business Taxes Committee
- ☐ Customer Services and
Administrative Efficiency
Committee
- ☐ Legislative Committee
- ☒ Property Tax Committee
- ☐ Other

ASSESSMENT JURISDICTION OF WIRELESS COMMUNICATION TOWER SITES

I. Issue

Should the State Board of Equalization delegate the duty to assess leased wireless communication tower sites to county assessors?

II. Staff Recommendation

Staff recommends that the Board:

- Delegate the duty to assess leased wireless communication tower sites to county assessors whenever constitutionally permissible, effective with the January 1, 2001 lien date.
- Approve the issuance of reporting instructions that wireless communication assessees must provide supplemental information in property statement filings to allow for the efficient transition of the delegated properties to local assessment.
- Approve the issuance of a Letter To Assessors to provide information and direction to assessors and other parties affected by the implementation of the change in assessment jurisdiction.

III. Other Alternative(s) Considered

The Board continues the current practice of not delegating leased wireless communication tower sites to county assessors.

IV. Background

The issue of assessment jurisdiction of leased wireless communication tower sites was raised by members of the wireless communication industry during the drafting of the *State Assessment Manual*. On November 1, 2000, the Property Tax Committee directed staff to meet with interested parties, further analyze the matter of assessment delegation, and return to the Committee with a recommendation regarding the delegation of wireless communication tower sites.

In following the direction of the Board, the staff analyzed trends in the wireless communication industry and evaluated reporting requirements and current policies regarding the delegation of property, including land, used but not owned by state assessees. A meeting was held on February 6, 2001 to discuss staff's recommendation that the Board delegate assessment jurisdiction for wireless communication tower sites to local assessors wherever permitted by the California Constitution.

All property that is either *owned* or *used* by a state assessee is subject to state assessment. Under specified circumstances, however, the Board may delegate the assessment duty to a county assessor. Section 19 of article XIII of the California Constitution states:

...The Board may delegate to a local assessor the duty to assess a property used but not owned by a state assessee on which the taxes are to be paid by a local assessee....

Based on this authorization, the Board *may delegate* to a county assessor the duty to assess property leased by a state assessee, if a local assessee pays the property taxes. In determining when to delegate, the Board's historical policy and procedure has been to assess all unimproved property (i.e., land) that is leased by a state assessee and to assess all improvements that are leased by a state assessee provided the improvements are leased entirely (i.e., 100%) by the state assessee. If, however, only a portion of an improvement is leased by the state assessee, and a local assessee pays the property taxes, the Board has delegated its jurisdiction over that portion of the property to the county assessor for purposes of efficient property tax administration.

For example, if a state assessee leases land to erect a wireless communication tower, the leased land and owned tower are assessed by the Board. If a state assessee leases an entire office building and the underlying land, the entire office building, including the land, is assessed by the Board. If a state assessee leases a portion of an office building, however, and a local assessee is paying the property taxes, the Board delegates the duty to assess the leased portion of the office building to the county assessor. This practice is consistent with the Board's constitutional discretion and, in staff's view, is administratively efficient.

Staff's analysis of the current situation regarding the wireless communication industry and tower site jurisdiction revealed the following:

- Most wireless communications providers have either sold their communications towers, along with an assignment of the rights they hold in the tower sites, or assigned the leasing rights to the towers to a new type of business entity called a tower aggregator. These transactions occurred primarily during the 2000 calendar year. Typically, the communication providers lease back a portion of the tower, and perhaps a specific portion of the tower site, for their own use. The tower aggregator leases space on the tower to other communication companies. This new arrangement allows communication companies to concentrate on their core business and allows the tower aggregators to efficiently market tower sites to the industry.

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- Application of the current policy of attributing fractionalized interests to each state assessee would create an administrative burden for all the parties involved. Each assessee would be required to file new maps describing the smaller interest remaining in the tower site. The Valuation Division would be required to process the filings, value the new interests, and transmit the map changes to the respective counties. The counties would then be required to update the assessor's parcel maps and make any required adjustments to the base year value of each affected parcel.
- The lien date 2000 Board Roll of State-Assessed Property included approximately 3,100 leased wireless communication tower sites assessed as fee simple interests and approximately 1,100 sites assessed as possessory interests. Because multiple companies are commonly located on each site, the potential effect on the processing of land changes by the Valuation Division for wireless tower sites would be to double the average annual workload of 5,000 land changes.
- In general, the transfer of assessment jurisdiction to county assessors would result in lower assessments because the tower sites would be subject to the assessment limitations of article XIII A. The lease terms (including renewal options) are usually less than the thirty-five years needed to qualify as a change in ownership. Thus, the full value of the tower site would not be reflected in the assessed value unless the entire parcel underwent a change in ownership due to a sale or other transfer. If the lease term (including renewal options) is 35 years or more, however, the full value of the tower site would be reflected in the assessed value.
- Tower sites located on property subject to California Land Conservation Act (CLCA) contracts would likely see property tax increases. Property under these contracts (commonly known as the Williamson Act) is assessed at a value based on agricultural use in exchange for the owner's agreement not to develop the land in the future. In general, the value for CLCA properties is established by capitalizing the income attributable to the land from agricultural use and compatible nonagricultural uses by a statutorily prescribed capitalization rate. Because the communication tower use is a compatible nonagricultural use, the income from the tower site lease would be included in the income to be capitalized into value. The statutorily prescribed rate is much lower than the market capitalization rate used to value the tower site for state assessment. The result is a higher taxable value for the entire parcel under CLCA contract. Most tower site lease contracts require the lessee to reimburse the landowner for any increase in property taxes. In such cases, the agricultural landowners would not be affected by the change in jurisdiction. Lessors assessed under a CLCA contract without a property tax reimbursement clause in the lease would be subject to a property tax increase.

Representatives of the wireless communication industry have agreed to provide supplemental information to the Valuation Division in order to provide sufficient detail to allow county assessors to properly enroll assessments for tower sites.

Parties represented at the February 6, 2001 meeting included the California Assessors' Association, representatives of state-assessed wireless communication companies, and the California Farm Bureau. The parties reached agreement that the proposal to delegate the assessment responsibility to the counties was desirable from the perspective of administrative efficiency. Although the California Farm Bureau agrees that the delegation would be administratively efficient, the organization has protested this delegation of authority unless landowners with property subject to California Land Conservation Act (CLCA) contracts are protected from higher property taxes that would result from the increase in compatible use income.

V. Staff Recommendation

A. Description of the Staff Recommendation

Staff recommends that the Board:

- Delegate the duty to assess leased wireless communication tower sites to county assessors whenever constitutionally permissible, effective with the January 1, 2001 lien date.
- Approve the issuance of reporting instructions that wireless communication assessees provide supplemental information in property statement filings to allow for the efficient transition of the delegated properties to local assessment.
- Approve the issuance of a Letter To Assessors to provide information and direction to assessors and other parties affected by the implementation of the change in assessment jurisdiction.

B. Pros of the Staff Recommendation

- Avoids a significant increase in Valuation Division administrative and appraisal workload.
- Significantly reduces the administrative and filing burden for wireless telecommunication state assessees.
- Avoids a significant increase in the administrative and appraisal workload of county assessors.
- Provides county assessors with the information needed to assess the delegated properties starting with the 2001 lien date.

C. Cons of the Staff Recommendation

- Delegation of tower sites to local assessment will subject these properties to the assessed value limitations of article XIII A of the California Constitution. Thus, a reduction in property taxes collected by the counties will occur.
- Assessments on land subject to California Land Conservation Act contracts will increase as a result of the delegation of the assessment duty because compatible use income will increase.
- Property used by a state assessee would be excluded from the appraisal unit, and thereby not in keeping with the unitary concept.

D. Statutory or Regulatory Change

None

E. Administrative Impact

Board staff will be required to allocate resources to accommodate the one-time increased workload necessary to process the Statements of Land Changes filed by the assessees and distribute the information to county assessors. It is anticipated that this workload will be absorbed within the current staff level.

F. Fiscal Impact

1. Cost Impact

No additional cost.

2. Revenue Impact

See attached Revenue Estimate.

G. Taxpayer/Customer Impact

Local assessees that own land upon which a wireless communication tower is located will assume the tax responsibility. The effect on most local assessee owned land will be minimal because real property is subject to the value limitations of article XIII A. As most of these sites are leased for less than 35 years, a change in ownership will not occur because of the lease transaction. Thus, the local assessment will revert to the lesser of current fair market value or the factored base year value. Any subsequent change in ownership of the land would cause the county assessor to establish a new base year value to include the value added due to the use of the communication tower.

Other local assessees (property subject to California Land Conservation Act (CLCA) contracts) will likely see larger and more immediate property tax increases. Because the communication tower use is a compatible use, the income derived from the land lease will be capitalized at a much lower statutorily prescribed rate than if it were state-assessed. The result is a higher taxable value. It is expected that most of this increase in property taxes on CLCA lands will be borne by the tower aggregators and lessees because the lease contracts generally require that the lessee reimburse the land owner for any increase in property taxes. However, where the lease contract does not require reimbursement for property tax increases, the agricultural landowner will experience an increase in property taxes.

There will be no change in the assessment of tower sites located on property owned by wireless communication companies or other state assessees because only leased sites can be delegated to local assessors.

H. Critical Time Frames

A decision on this issue must be rendered no later than March 2001 in order to implement this Board policy for the 2001 lien date.

VI. Alternative 1

A. Description of the Alternative

The Board continues current practice of not delegating leased wireless communication tower sites to county assessors.

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B. Pros of the Alternative

- In keeping with the unitary concept, property used by a state assessee would be assessed as part of the appraisal unit.
- Agricultural landowners would not experience a tax increase due to a change in Board policy that was unanticipated at the time of the negotiation of certain communication tower site leases.

C. Cons of the Alternative

Continuation of past practice would result in an increase in:

- Valuation Division administrative and appraisal workload.
- Wireless telecommunication state assessee's administrative and filing burden.
- County assessors administrative and appraisal workload.

D. Statutory or Regulatory Change

None

E. Administrative Impact

Continuation of past practice would result in significant workload increases for the Valuation Division for the 2001 assessment year. If the Statements of Land Changes were not processed in time for inclusion on the 2001 Board Roll, subsequent roll changes would be required to accurately reflect the correct land value in the unitary assessment.

F. Fiscal Impact

None

1. Cost Impact

None

2. Revenue Impact

None

G. Taxpayer/Customer Impact

No change in assessment duty, state assessee reporting requirements, nor transfer of tax risk from state assessee to local assessee would occur. However, nearly all of the tower sites have undergone either a transfer or assignment of a leasehold interest during the past year. Reporting these transfers would represent a significant administrative and filing burden on wireless communication state assessee's.

H. Critical Time Frames

A decision on this issue must be rendered no later than March 2001 in order to timely implement this Board Policy for the 2001 lien date.

Prepared by: Property Taxes Department; Valuation Division
Legal Division; Property Taxes Section

Current as of: March 14, 2001

**BOARD OF EQUALIZATION
REVENUE ESTIMATE****ISSUE #01-005****Assessment Jurisdiction of Wireless Communication Tower Sites****Staff Recommendation**

Under the staff's recommendation, the Board would delegate to county assessors the jurisdiction to assess leased wireless communication tower sites.

Alternative

Under the staff's alternative proposal, the Board would continue the current practice of not delegating the jurisdiction to assess leased wireless communication tower sites.

Background, Methodology, and Assumptions

Under current practice, land that is used by a state-assessee and improvements that are solely used by a state-assessee are assessed by the Board of Equalization. Improvements, such as buildings, that are not solely used by a state-assessee and for which the taxes are paid by a local assessee are delegated to and assessed by the county assessors.

In the last few years, communications tower aggregators have purchased communications towers along with the assignment of rights in the tower sites, or have been assigned the leasing rights to the towers from wireless communications providers. Typically, these providers, who are, in general, state-assesseees, then lease back a portion of the tower, and perhaps a specific portion of the site, from the aggregator. At issue is whether or not the jurisdiction to assess land that is used but not owned by a state-assessee and on which the property taxes are paid by a local assessee should be delegated to the county assessors.

There is no revenue effect under the alternative since it would continue current practice.

Under the recommendation, the delegated properties would be moved from the state roll to the local rolls. Under state assessment, they are assessed at the current fair market value. Under local assessment, these would be subject to Proposition 13 restrictions and would be assessed at the lesser of the current fair market value or the factored base year value. Any subsequent change in ownership would cause the county assessor to establish a new base year value based on the fair market value as of the date of the change in ownership.

Under local assessment, there would be a significant increase in property tax revenues for sites on lands subject to California Land Conservation Act (CLCA) contracts since the statutory capitalization rates used by county assessors to value these lands are significantly lower than the capitalization rates used in valuing state-assessed property. Staff estimates that the assessed values of these lands using the CLCA capitalization rates would be two or three times their assessed values as state-assessed property, including land located within a farmland security zone that is valued at 65 percent of the regular CLCA contract value.

For leased wireless communication tower sites not under a CLCA contract, no change in ownership is triggered by these leases since the sites are leased from the local landowners for terms less than 35 years in duration. Each site would be valued at the factored base year value of the local landowner. Unless the underlying parcel changed ownership since it was leased as a tower site, its current fair market value, which would take into account the tower site use, generally would be substantially higher than its factored base year value.

According to Valuation Division staff estimates, the value on the state roll of wireless communication tower sites that are used but not owned by a state-assessee, excluding possessory interests, amounts to less than \$155 million. The revenue effect is difficult to pinpoint due to the various factors involved and their lack of predictability. Among the factors are:

- The mixture, now and in the future, of property used but not owned by a state-assessee on which the taxes are paid by a local assessee vs lands subject to CLCA contracts or other property used but not owned by a state-assessee on which the taxes are not paid by a local assessee.
- The number and value of the potentially affected properties in the future.

Assuming that the average factored base year value of the properties described above is eighty percent lower than the fair market value and that jurisdiction for all of these properties is delegated, the estimated overall decrease in assessed value under the recommendation is then 80 percent x \$155 million, or \$124 million. The estimated annual decrease in revenues at the basic one percent property tax rate is \$124 million x 1 percent, \$1.24 million.

Revenue Summary

The estimated annual decrease in revenues at the basic one percent property tax rate under the recommendation is \$1.24 million. This decrease will grow over time as the factored base year values lag behind the current fair market values. There is no revenue effect under the alternative since it would continue current practice.

Preparation

This revenue estimate was prepared by Aileen Takaha Lee, Research and Statistics Section, Agency Planning and Research Division. The estimate was reviewed by Ms. Laurie Frost, Chief, Agency Planning and Research Division, and by Mr. Harold Hale, Chief, Valuation Division, Property Taxes Department. For additional information, please contact Ms. Lee at 445-0840.

Current as of March 14, 2001.